

In re Application of: Poplawski *et al.*
Application No.: 10/637,161
Atty Docket No.: 36400.35US2

Examiner: T. Lewis
Art Unit: 3681

REMARKS

By this response, in the Present Application, no Claims have been cancelled, and originally-submitted Claims 1 and 9 have been amended. As such, Claims 1-22 remain pending in the Present Application.

In the Office Action, Claims 1-18 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

In response, Applicants respectfully direct the Examiner to the description contained in the specification at Page 16, Line 12 through the end of Page 17, as well as Figures 18, 19 and 25. The specification is original and, consequently, can be relied upon as support for the subject matter contained in Claims 1-18. Specifically, contained within the specification is the disclosure of both front mounting bracket (Reference Numeral 80) and side mounting bracket (Reference Numeral 82). The specification clearly notes that both mounting brackets, which are "U"-shaped, are used in the mounting of the IHT to the vehicle frame. Both mounting brackets are configured so that one parallel aspect of the "U"-shape (*i.e.*, the "sides" of the "U") is affixed to the vehicle frame, while the other parallel aspect is affixed to the transmission housing. The perpendicular aspect (*i.e.*, the "bottom" of the "U"), as noted in the specification, joins the two parallel aspects. Further, in the discussion on Page 17 of Figure 25, it is noted that "[w]hile the mounting of IHT 10 is preferable to the side of frame 78 to simplify attachment, mounting brackets 80 and 82 could be oriented and positioned in other locations to facilitate attachment of IHT 10 to any portion of frame 78."

In re Application of: Poplawski *et al.*
Application No.: 10/637,161
Atty Docket No.: 36400.35US2

Examiner: T. Lewis
Art Unit: 3681

This vertical relationship is clearly described in the specification and, more importantly, clearly illustrated by Figures 18, 19 and 25. Figures 18, 19 and 25 are original figures and, consequently, can be relied upon as support for the subject matter contained in Claims 1-18. Figure 18, which illustrates a "bottom view of the hydrostatic transmission of Figure 1 mounted to a vehicle frame" (Page 4, Lines 9-10), illustrates the aforementioned brackets as being vertically-oriented, in compliance with Independent Claim 1. Further, Figure 19, which illustrates an "exploded view of the hydrostatic transmission and vehicle frame of Figure 18" (Page 4, Lines 11-12), also illustrates the aforementioned brackets as being vertically-oriented. Finally, Figure 25 illustrates a hydrostatic transmission mounted to a vehicle frame. See Page 5, Lines 4-6. Thus, Figures 18, 19 and 25 illustrate the direct mounting of the hydrostatic transmission to the vehicle frame.

Thus, Applicants respectfully submit that Claims 1-18 complies with the written description requirement of 35 U.S.C. § 112, first paragraph.

In the Office Action, Claims 1-3 were rejected under 35 U.S.C. § 102(e) as being anticipated by Boyer *et al.*, US. Patent Application No. 2002/0170384. Also in the Office Action, the Examiner rejected, under 35 U.S.C. § 103(a), Claims 5, 7-11 and 14-17 as being unpatentable over Boyer in view of Hauser *et al.*, U.S. Patent No. 6,223,531; Claims 4 and 6 over Boyer in view of Yoshina *et al.*, U.S. Patent No. 6,131,316; and Claim 18 over Boyer in view of Hauser and further in view of Yoshina.

It is well settled that a rejection under 35 U.S.C. § 102 requires a single reference to disclose each and every element set forth in a claim under consideration. In this regard, all of the limitations of a claim, including functional limitations, must be

In re Application of: Poplawski *et al.*
Application No.: 10/637,161
Atty Docket No.: 36400.35US2

Examiner: T. Lewis
Art Unit: 3681

considered when weighing the differences between the claimed invention and the single cited reference. Meanwhile, a rejection under 35 U.S.C. § 103 requires some suggestion or motivation to modify one or more cited references to arrive at the claimed invention. When considering obviousness, it is impermissible to use hindsight, or the Applicants' disclosure, to provide the necessary suggestion or motivation.

It is submitted that the cited references neither disclose nor suggest each and every limitation set forth in the Claims at issue. By way of example, none of the cited references, alone or in combination, disclose the claimed vehicle of Independent Claim 1, which comprises a vehicle frame having at least one vertically oriented side frame member, a transmission housing directly mounted to a vertical face of the side frame member, a hydrostatic transmission mounted in the transmission housing and comprising a hydraulic pump and hydraulic motor connected through a hydraulic circuit and an axle shaft driven by the hydraulic motor and extending perpendicular to the vertical frame member. Similarly, none of the cited references, alone or in combination, disclose the claimed vehicles of Independent Claims 1 and 9.

Attention is directed to Figure 29, which illustrates a hydrostatic transmission "having a boss for mounting the hydrostatic transmission to a vehicle frame" (Page 5, lines 14-16), and the corresponding text, located at Page 18, Lines 6-15. More specifically, Figure 29 describes an embodiment in which a boss (Reference Numeral 144) is used to affix the transmission directly to a housing. Therefore, it is apparent that regardless of whether the bracket or the boss is used, the Present Invention contemplates the mounting of the transmission housing directly to a vertical face of a vertically-oriented side frame member.

In re Application of: Poplawski *et al.*
Application No.: 10/637,161
Atty Docket No.: 36400.35US2

Examiner: T. Lewis
Art Unit: 3681

Specific to Independent Claims 1 and 9, *Boyer*, rather than disclosing the claimed vehicle, discloses a differential-equipped transaxle. Among other elements, *Boyer* discloses a transaxle including a vehicle frame having at least one vertically-oriented side frame member and a transmission housing mounted, via an axle drive unit, to the frame member. *See Boyer, generally*, at FIG. 1.

However, *Boyer* does not teach a transmission housing directly mounted to a vertical face of the vertically-oriented side frame member, as is required by pending Independent Claims 1 and 9. Specifically, the disclosure in *Boyer* concerns a hydrostatic transaxle, such as for a lawnmower, which is mounted to the axle gearing, noted in the disclosure as a pair of "substantially C-shaped" rails. *See Boyer*, paragraph [0044] (in FIG. 1, the substantially C-shaped rails are illustrated as Reference Numerals 24 and 26). Thus, it cannot be said that *Boyer* discloses each and every limitation of pending Independent Claims 1 and 9. Further, because the disclosure in *Boyer* only discusses the use of an independent substantially C-shaped rail, and neither contemplates the use of any other type of rail nor discloses any element equivalent to a vertical rail frame, nor the direct mounting of the transmission thereto, there is no suggestion, implicit or express, within *Boyer* to arrive at the Present Invention.

With reference to the § 103(a) rejections, Applicants submit that, for the reasons stated above concerning *Boyer*, neither the combinations of *Boyer* and *Hauser*, *Boyer* and *Yoshina* nor *Boyer*, *Hauser* and *Yoshina* discloses a transmission housing directly mounted to a vertical face of the side frame member, as is required by Independent

In re Application of: Poplawski *et al.*
Application No.: 10/637,161
Atty Docket No.: 36400.35US2

Examiner: T. Lewis
Art Unit: 3681

Claims 1 and 9. Thus, it cannot be said that the combined references suggest each and every limitation set forth in the claims at issue.

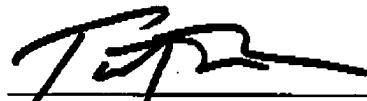
Applicants submit that any amendments to the Claims that were not made in response to the Examiner's objections or rejections were made for non-statutory purposes. Accordingly, any such amendments should not limit the scope of the present invention, which is to be given the full breadth of the claim language and any equivalents thereof.

Based on the foregoing Amendments and Remarks, the present Application is considered to be in condition for allowance. Such action on the part of the Examiner is respectfully requested. If the Examiner feels a telephonic conference would expedite the allowance of the present Application, it is suggested the Examiner contact the undersigned Attorney.

It is further believed that no fee is due for the filing of this Response. If such is not the case, any fee due may be charged to our firm's Deposit Account No. 502261.

Respectfully submitted,

Date: 28 December 2004



Timothy M. Morella
Reg. No. 45,277
Attorney for Applicants

NEAL, GERBER & EISENBERG LLP
2 North LaSalle Street
Chicago, Illinois 60602.3801
312 269 8000

In re Application of: Poplawski *et al.*
Application No.: 10/637,161
Atty Docket No.: 36400.35US2

Examiner: T. Lewis
Art Unit: 3681

Certificate of Transmission under 37 CFR § 1.8: The undersigned hereby certifies that this document is being transmitted to the Commissioner for Patents **via facsimile** at 703 872 9327, this 28th Day of December, 2004.

By:


Kelly A. Breese

NGEDOCs: 1109355.1